

1 THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 THE UNITED STATES OF) No. H-07-CR-362
5 AMERICA)
6 -vs-) HOUSTON, TEXAS
7) JULY 3, 2008
8)
9 KEVIN XU) 8:29 a.m.

10 Volume IV

11 TRANSCRIPT OF JURY TRIAL
12 BEFORE THE HONORABLE SIM LAKE AND A JURY

13 A P P E A R A N C E S:

14 FOR UNITED STATES:

15 SAMUEL LOUIS and VERNON LEWIS
16 Office of the US Attorney
17 919 Milam
18 PO Box 61129
19 Houston, Texas 77208
20 713-567-9000
21 713-718-3406(fax)

22 FOR DEFENDANT:

23 COLIN B. AMANN and JULIE A. KETTERMAN
24 Kettermann & Amann
25 P.O. Box 131766
26 2603 Augusta, Suite 1060
27 Houston, Texas 77057
28 713-522-9777
29 713-522-9888(fax)

30 SEAN BUCKLEY
31 Habern, O'Neil, Buckley & Pawgan, LLP
32 300 West Davis, Suite 540
33 Conroe, Texas 77301
34 713-863-9400

35 INTERPRETERS:

36 JUNE HU MANDARIN
37 PETER WANG

38 OFFICIAL COURT REPORTER: JEANETTE C. BYERS, RPR, CSR
39 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPH,
40 TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

I N D E XWITNESSPAGE**STEPHEN T. McCANE**

| | |
|-------------------------------|-----|
| DIRECT EXAMINATION..... | 500 |
| CROSS-EXAMINATION..... | 523 |
| REDIRECT EXAMINATION..... | 533 |
| RECROSS-EXAMINATION..... | 535 |
| DEFENDANT RESTS..... | 536 |
| GOVERNMENT RESTS..... | 536 |
| REPORTER'S CERTIFICATION..... | 558 |

1 (Outside the presence of the jury.)

2 THE COURT: Please be seated.

3 I'll talk to you briefly about the charge.

4 Does the Government have the additional instructions
5 I discussed with you yesterday?

6 MR. LOUIS: I do, Your Honor.

7 THE COURT: May I see them?

8 MR. AMANN: I've got a copy, Judge, if I may
9 approach.

10 Oh, Sam, you got it.

11 THE COURT: Okay. This is an instruction for 21 USC,
12 Section 331(i).

13 Does the defense agree that that is the correct
14 instruction?

15 MR. AMANN: We do, Your Honor. I have no objection.

16 THE COURT: All right. Then I think we should put
17 it -- put it between Pages 19 and 20.

18 Now, how about the verdict form?

19 MR. LOUIS: I was actually downstairs fighting with
20 the copies, that's why I waited so --

21 THE COURT: Do you have one?

22 MR. LOUIS: I do not have one. I was trying to go
23 downstairs and -- that's why I'm late -- trying to print one
24 out.

25 THE COURT: But have you created it and just not

1 printed it?

2 MR. LOUIS: I have worked on it and I was trying to
3 print it out and make some changes to it, but I couldn't do it
4 this morning because our printer downstairs -- computer system
5 downstairs, for whatever reason this morning, is not working.

6 THE COURT: Okay. Do you have a proposed
7 instruction?

8 MR. AMANN: No, Your Honor. I was in agreement with
9 the Government's.

10 THE COURT: Okay.

11 MR. LOUIS: I apologize. I've been here since about
12 7:30.

13 THE COURT: Okay. Josh, come here.

14 (Discussion was held off the record.)

15 MR. LOUIS: I have some language, if the Court is
16 talking about the instruction, I have some that I was trying
17 to work off of. This is one that was previously given by
18 Judge Werlein where there's multiple objects of a conspiracy.
19 I was working off of that.

20 THE COURT: Just a minute.

21 (Discussion was held off the record.)

22 THE COURT: Is your witness here?

23 MR. AMANN: He is, Your Honor.

24 Before we get started, may I do a little bit of
25 housekeeping?

1 THE COURT: Sure.

2 MR. AMANN: Yesterday the Court did not allow us to
3 admit Defendant's Exhibits 1 through 4. What I would like to
4 do, Your Honor, is just offer them for purposes of the record
5 and either make them a Court's exhibit or --

6 THE COURT: I've already noted on the exhibit list
7 they're not admitted. And this would be 5.

8 MR. AMANN: Okay. May I submit the actual exhibits?

9 THE COURT: Yeah, they're attached.

10 MR. AMANN: Okay.

11 THE COURT: I told you if you had some law, I would
12 reconsider. Have you found any law?

13 MR. AMANN: Judge, we found some, but it wasn't -- I
14 didn't think it was powerful enough and I didn't want to fight
15 blindly. I was comfortable with the position we had. And
16 I didn't think the law was powerful enough at this point to
17 bring Agent Sherman back on and go through the whole thing
18 again.

19 THE COURT: Okay.

20 MR. AMANN: It's just for the appellate record.

21 THE COURT: It will be filed. You can check.

22 MR. AMANN: I'm just -- you know me.

23 THE COURT: Better to be safe than sorry, sure.

24 MR. AMANN: Yes, sir. Thank you. And I think we
25 also filed a revised list --

1 THE COURT: You did.

2 MR. AMANN: -- with those exhibits.

3 THE COURT: You did.

4 All right. Shall we bring the jury in?

5 MR. AMANN: We can, Your Honor.

6 THE COURT: Bring the jury in.

7 (Jury comes in.)

8 THE COURT: Good afternoon, ladies and gentlemen.

9 Please be seated. Thank you again for being here on time.

10 The Government having rested, the defendant may now
11 call witnesses. Of course the defendant has no obligation to
12 offer any testimony or present any witnesses. Do you have any
13 witnesses you wish to call?

14 MS. KETTERMAN: We do, Your Honor.

15 THE COURT: All right. You may call your first
16 witness.

17 MS. KETTERMAN: Thank you, Judge.

18 Defendant calls Stephen McCane.

19 THE COURT: Please come around and be sworn.

20 STEPHEN T. McCANE

21 having been first duly sworn, testified as follows:

22 THE COURT: You may proceed.

23 MS. KETTERMAN: Thank you, Judge.

24

25

1 DIRECT EXAMINATION

2 BY MS. KETTERMAN:

3 Q. Mr. McCane, would you please introduce yourself to the
4 judge and jury.

5 A. My name is Steve McCane. I'm a consultant to American
6 companies selling American products to China. I started my
7 Chinese studies back in --

8 Q. Let me stop you there.

9 A. All right.

10 Q. We'll get into that.

11 For the purposes of the record, could you please
12 spell your first and last name.

13 A. Stephen, S-t-e-p-h-e-n, T. McCane is M-c-C-a-n-e.

14 Q. Okay. Now, as you started to talk about, what is --
15 where do you work?

16 A. I'm a private consultant so I -- companies hire me to
17 take their products to China.

18 Q. And where do you live?

19 A. I live in St. Louis, Missouri.

20 Q. And how long have you been working in this type of
21 business?

22 A. Since 1992.

23 Q. You mentioned a few minutes ago that you have studied the
24 Chinese culture and things of that sort. Could you explain to
25 the jury what you were beginning to explain before I

1 interrupted you?

2 A. Someone asked me a question about Buddhism. I was a
3 devout Christian at the age of 19 and still am. And he asked
4 me a question about Buddhism the week before I attended my
5 first week in college.

6 MR. LOUIS: Objection. Nonresponsive.

7 THE COURT: Overruled.

8 A. And so I studied religion and as I got into religion, I
9 became an exchange student at the Chinese University of Hong
10 Kong from 1975-76, (spoke Chinese,) which is Mandarin.

11 BY MS. KETTERMAN:

12 Q. Can you slow down a little bit.

13 A. Oh, I'm sorry.

14 Q. This lady right here is taking down everything you say so
15 if you can slow down a little bit especially with the Chinese
16 terms.

17 A. I went to the Normal University in Taipei, Taiwan.

18 Q. Could you spell Taipei, Taiwan for us.

19 A. T-a-i-p-e-i, Taiwan, T-a-i-w-a-n.

20 Q. So you studied there. And then what?

21 A. Then I went to the Chinese University of Hong Kong. I
22 was an exchange student during the Cultural Revolution. Mao
23 Zedong was still living, and Zhou Enlai, the two main leaders
24 in China, were still living at that point.

25 Q. So you are -- you can speak Chinese?

1 A. Marginally, yes. I can get around China very easily.

2 Q. Okay. And in total, how long did you actually live in
3 China?

4 A. Two-and-a-half years.

5 Q. Since then have you worked constantly with China back and
6 forth?

7 A. All right. Since 1979 when Deng Xiaoping changed the
8 atmosphere, the business atmosphere in China, I didn't work
9 anymore in China.

10 Q. Now, you explained that your job is that the companies
11 hire you as a consultant?

12 A. Yes.

13 Q. Do they do this specifically for relations in China?

14 A. Yes.

15 Q. And could you explain to the jury exactly what your job
16 is?

17 A. My job is not to be Chinese, first of all. My job is to
18 be an American. So I take the Chinese culture of the business
19 culture and the other aspects of the culture and I translate
20 them into American terms so that the American businessman has
21 clean understanding of what's going on.

22 Q. Okay. Now, have you -- do you know Kevin Xu?

23 A. Yes, I do.

24 Q. When is it that you first met Kevin Xu?

25 A. I met Kevin on our T2 -- can I say who hired me?

1 Q. Well, just when and --

2 A. I met him in April of 2006.

3 Q. Okay. And at that time you were working for what
4 company?

5 A. I was working for T2 Laboratories out of Jacksonville,
6 Florida.

7 Q. What was your position at T2 in April of 2006?

8 A. Vice president of international sales.

9 Q. Okay. And you worked with a man named Scott Gallagher;
10 is that correct?

11 A. That's correct.

12 Q. And what position did Scott Gallagher have?

13 A. He was president of T2.

14 Q. And you were vice president?

15 A. Yes.

16 Q. Okay. And, if you could please, just briefly explain
17 what T2 Laboratories -- what was the business?

18 A. T2 Laboratories was a chemical manufacturing facility in
19 Jacksonville, Florida. They manufactured several chemicals
20 but they had invested 5 million U.S. dollars in
21 methylcyclopentadienyl manganese tricarbonyl, which on the
22 street is called MMT, which is an octane boosting additive to
23 gasoline.

24 Q. Okay. Now, when you say you worked in chemicals, were
25 these chemicals such as what?

1 A. This was liquid manganese that you add at very marginal
2 amounts to gasoline to boost the octane in the gasoline by
3 two.

4 Q. We're talking gas and oil and those types of thing?

5 A. Gas and oil, right.

6 Q. Now, in April of 2006 what brought you to meet Kevin Xu?
7 How did that come about?

8 A. I was hired in November of 2005.

9 Q. At T2?

10 A. At T2. And I researched China regarding this chemistry.
11 And I had a hundred and fifty different potential leads, which
12 I brought down to less than ten.

13 Q. Okay. Let me stop you right there. Leads for what?

14 A. For potential sellers of our chemistry.

15 Q. Okay. So would it be fair to say you were looking for a
16 representative of T2 who was in China to sell the T2
17 chemicals?

18 A. That's a correct statement.

19 Q. Okay. So you started a search for a representative?

20 A. Yes. And it was our second trip. Our first trip was to
21 Shanghai. And we evaluated what I considered to be the number
22 one potential person and after meeting and attempting to do
23 business with this individual, we knocked him off the list.

24 Q. Okay. And eventually you found Mr. Xu?

25 A. Yes.

1 Q. And did T2 ultimately start a business relationship with
2 Mr. Xu?

3 A. After several months, yes.

4 Q. Okay. In the beginning -- and I'm talking about April of
5 2006 -- is that when you actually met face to face with
6 Mr. Xu?

7 A. Yes, I -- actually I was across town, very far from his
8 offices and I gave him a call. This was my second call that
9 day. And it was 10:00 in the morning and he said, "Let's have
10 lunch at your hotel," which impressed me right off because it
11 would take about that much time for him to come across town to
12 our hotel.

13 Q. Okay. Now, before April of 2006 when you actually met
14 Mr. Xu face to face, had you corresponded with him via email
15 or any other means?

16 A. Yes, I had. I started to correspond with him in December
17 and he had favorable responses. He's a very responsive
18 individual and his English was good in written form.

19 Q. Now, when you say he was very responsive, could you
20 explain a little bit what you mean by that?

21 A. If you email or fax 100 Chinese individuals on a subject
22 matter, you'll be lucky if you get five responses. And out of
23 those five responses you'll get -- you'll be lucky if you get
24 two that are responsive, meaning they'll do more than one
25 email or whatever.

1 Q. So would you say that, based on your experience with the
2 Chinese and dealing with the Chinese culture, was it more
3 usual or unusual in how quickly Mr. Xu would respond to you?

4 A. It was the type of business relationship I like. The
5 other way is to go to China and constantly meet people and
6 evaluate it that way. And that's --

7 Q. Maybe you misunderstood my question. I probably didn't
8 say it correctly. You testified that Kevin would respond to
9 you quickly.

10 A. Yes.

11 Q. In other words, he wouldn't take days to respond?

12 A. No.

13 Q. It happened quickly?

14 A. Very quickly.

15 Q. Was that characteristic of Mr. Xu, was it a usual trade
16 of the Chinese culture or was it unusual? Was it rare?

17 A. I would think it's very rare.

18 Q. Once you -- in the beginning when you were corresponding
19 back and forth with Mr. Xu -- you said it started in
20 December --

21 A. Yes.

22 Q. -- of '05?

23 A. '05.

24 Q. Up until -- from December of 2005 until April of 2006,
25 was there any type of contract between T2 and Kevin Xu?

1 A. No.

2 Q. But there was -- would it be fair to say that there were
3 negotiations regarding business dealings during that time?

4 A. No, there was -- there was just an attempt to see if
5 there was interest in our product.

6 Q. I'll reword it. Were there negotiations as far as
7 whether Mr. Xu was going to become a representative of T2 or
8 not?

9 A. I was negotiating. He didn't understand I was. But,
10 yes, I was trying to see if he was on my short list.

11 Q. So it was a test run?

12 A. Yes.

13 Q. Okay. When, from December of 2005 until April of 2006,
14 when did T2 actually begin to contract with Mr. Xu?

15 A. We didn't at all contract during that period of time.

16 Q. Okay. When is it that you did contract with him?

17 A. We began talking about contracts in early June of '06.

18 Q. Okay. So during December of 2005 and June of 2006 did
19 Mr. Xu -- did you have him do any test runs as far as what he
20 was capable of? Do you understand my question?

21 A. Yes, I do. And this might be more of a lengthy answer.
22 Trying to crack the petrochemical industry in China --

23 Q. Let me stop you there. Could you explain what the
24 petrochemical industry is, just briefly.

25 A. The petrochemical industry is that which controls the

1 discovery -- the point out of the ground oil and refining of
2 oil.

3 Q. Okay.

4 A. China cracked -- the petrochemical industry in China is
5 very difficult.

6 Q. Okay.

7 A. Very difficult.

8 Q. Okay.

9 A. There are no ways into that industry as can be attested
10 by the U.S. lack of cracking that industry.

11 Q. Okay. I'm going to stop you there again. Would it be
12 fair to say that what you're talking about is, as far as
13 cracking the industry, are you saying that it's tough for
14 American business to get into the Chinese business?

15 A. Yes. It's a national security concern of China.

16 Q. Okay.

17 A. So they don't allow foreign individuals to get close into
18 that industry.

19 Q. What is it exactly that T2 was wanting Mr. Xu to do?

20 A. To sell our chemistry into their refining process.

21 Q. And what was -- was he successful.

22 A. The test would be whether we could get an audience with
23 powerful individuals in those two companies, Sinopac and Petro
24 China.

25 Q. And Petro China, that's equivalent to what company here

1 in the United States?

2 A. It's larger than Exxon. Last year it had greater profits
3 than Exxon.

4 Q. So you were, more or less, again, testing Mr. Xu, just
5 giving him an open opportunity to see what he can do?

6 A. Petro China has one president and 16 vice presidents.
7 And if you can't crack the vice presidential level, you can't
8 do your job well.

9 Q. And did Mr. Xu get you or get T2 an opportunity to visit
10 with one of those vice presidents?

11 A. Yes, he did.

12 Q. How long did it take him to do that?

13 A. He did it within three days.

14 Q. When you first met Mr. Xu, what is your understanding as
15 to what Mr. Xu's business was? What did he do for a living?

16 A. He started his career out at Sino-Chem. Sino-Chem is the
17 largest chemical --

18 Q. Let me start --

19 A. Okay.

20 Q. I don't want to get to the history just yet. At the time
21 you met Mr. Xu in April of 2006, what is your understanding as
22 to what Mr. Xu did for a living.

23 A. He traded chemicals.

24 Q. Okay. And when you talk about trading chemicals, would
25 it be fair to say he was -- what the term is -- I don't really

1 know what it is -- but a commodities trader?

2 A. Commodity and specialized chemicals, yes.

3 Q. All right. And could you explain to the jury exactly
4 what it means to trade chemicals or to be a trader of
5 chemicals?

6 A. The trading of chemicals in China, someone needs to go
7 through the process of learning to trade. To export from
8 China, you need a specific license. To import to China you
9 need a specific license. And with chemicals you need specific
10 licenses towards the specific chemicals.

11 Q. All right. Let's stop there. Without going into a lot
12 of detail, what -- just in very general terms, could you
13 explain to the jury what it means to trade chemicals?

14 A. It means to buy and sell chemicals on the open market.

15 Q. Okay. Is a trader in chemicals or a commodities trader
16 who specializes in trading chemicals, would they be considered
17 a salesman?

18 A. Very much so.

19 Q. That's what it is really?

20 A. But not all traders have salesmen quality.

21 Q. And I understand that. I'm just saying in very simple
22 terms, Mr. Xu's a salesman?

23 A. Yes.

24 Q. In your dealings with Mr. Xu, was he a hard worker?

25 A. Extremely hard.

1 Q. How many hours a day would he put in for your company on
2 average?

3 A. At least 14.

4 Q. And specifically in your dealings with Mr. Xu through T2
5 did you know Mr. Xu to be honest in his dealings with you?

6 A. Very much so.

7 Q. Straightforward?

8 A. Yes.

9 Q. When it came to a point where you actually contracted
10 with Mr. Xu, he wasn't considered an employee of T2, was he or
11 was he?

12 A. No, never was he an employee of T2.

13 Q. Okay. And what was his -- ultimately what was the
14 contract between T2 and Mr. Xu?

15 A. It was between T2 and Orient Pacific.

16 Q. And Orient Pacific is what?

17 A. A company that -- I don't know the --

18 Q. Mr. Xu's company; correct?

19 A. Yes, but I don't know the stock ramifications of who owns
20 Orient Pacific.

21 Q. Okay. But as far as you know, it's a company --

22 A. He's the president.

23 Q. He's the president. Okay. Ultimately what was the
24 contract between T2 and OPI?

25 A. Yes.

1 Q. As far as what did he get paid?

2 A. He got paid 5 percent of sales.

3 Q. Okay. So it would be important for him to make a big
4 sale?

5 A. With no sales he made no money.

6 Q. Right. In the Chinese culture -- and you have how many
7 years with the Chinese culture, about?

8 A. About 34, 35 years.

9 Q. Okay. Could you explain -- I want to word this
10 correctly -- I'll ask it this way: Is Mr. Xu a
11 service-oriented individual?

12 A. Yes, very much so.

13 Q. And you know what I mean by "service oriented"?

14 A. Yes.

15 Q. Could you explain to the jury what your opinion of a
16 service-oriented person is?

17 A. In a Chinese cultural point of view?

18 Q. Yes, sir. Yes, sir, I'm sorry, I should have --

19 A. I do business with a lot of different Chinese
20 businessmen. And when I do business, it's all in Chinese
21 because I'm partially fluent. I wouldn't say I'm fully fluent
22 in Chinese, but I'm partially fluent. And when business has
23 to be translated, the speed of business slows down
24 dramatically and also the activities of the business slows
25 down. So with any Chinese businessman, I would prefer that it

1 be all in Chinese so that the speed of the business would be
2 very quick and that the nature of the business would be
3 Chinese. So what I would like out of a Chinese businessman is
4 for him to correspondence with me either in Chinese or English
5 what corresponded that day. I took a lot of notes but I
6 didn't get everything. A lot of words I don't know. Kevin
7 was a person who never went to sleep without sending you a
8 memorandum of that business day. So often we would get
9 memorandums -- because I traveled with Scott a lot, sometimes
10 without Scott, 2:00 or 3:00 in the morning after an exhausting
11 business day starting at 7:00 and ending at 9:00.

12 Q. So you would have a meeting with Kevin and before the
13 day's end he would have typed up a memo of the notes of the
14 meetings?

15 A. All in English, yes.

16 Q. All in English. And he would get that over to you guys
17 before his day ended; is that correct?

18 A. Yes. And we would review it 5:00, 6:00 in the morning.
19 You're always suffering from jet lag, you're always up early.
20 You would review it so you started the day running rather than
21 walking.

22 Q. Is that something, again, that is common or uncommon as
23 far as the Chinese culture, for him to be a go getter that
24 way?

25 A. It's very uncommon.

1 Q. Would you characterize Mr. Xu as a people pleaser?

2 A. Very much so, yes.

3 Q. And in your dealings with Mr. Xu, did he always -- was he
4 very agreeable? Do you understand what I'm asking?

5 A. Yes. I mean, he had a backbone and, you know, he had his
6 objectives but when it came to finalizing some issue, he was
7 agreeable enough that we got through the issue and moved on.

8 Q. Let me stop you there. I'm going to word it a little
9 differently. Is Mr. Xu the type of person if I,
10 hypothetically, if I asked him, "Can you make me a cake," is
11 he the type of person that would say, "Yes, I'll get it done"
12 or --

13 A. Yes, even if he couldn't do it.

14 Q. -- did he say, "No, I can't do it"?

15 A. If he couldn't make it, he would figure out how to do it
16 and he would make a cake.

17 Q. Okay. And that's what I was trying to get to. If
18 somebody offered him an opportunity to do something, in your
19 dealings with Mr. Xu, in your opinion, was he the type to turn
20 something down or figure out how to make it work?

21 A. He was totally functional.

22 Q. Okay. Now, Kevin's family, is he married?

23 A. Yes, he is married to Jennifer.

24 Q. And does he have any children?

25 A. Yes, he does.

1 Q. And how many children does he have?

2 A. He has one child.

3 Q. Boy, girl?

4 A. Boy.

5 Q. How old is he?

6 A. Six.

7 Q. Mr. Xu lives in China; correct?

8 A. Yes.

9 Q. Now, knowing Kevin the way you do -- well, let me back
10 up. You understand what Mr. Xu is charged with; correct?

11 A. Yes.

12 Q. In a very general sense, you understand -- or do you
13 understand what happened that got him to where he is today as
14 far as sitting in this chair?

15 A. I don't know the specifics.

16 MR. LOUIS: Objection. Calls for speculation.
17 There's no foundation. This witness knows nothing about this
18 case.

19 THE COURT: I think that question was designed to
20 find out whether that's true or not.

21 Do you know anything personally about the facts of
22 this case?

23 THE WITNESS: No, sir.

24 THE COURT: All right.

25 MS. KETTERMAN: Thank you. Judge.

1 BY MS. KETTERMAN:

2 Q. In your dealings with Kevin -- now, you said that -- when
3 you said -- when T2 first started in looking at Kevin to see
4 whether they wanted to hire him, you tested him, so to speak?

5 A. Yes.

6 Q. Is that something that Kevin would do also with his
7 dealings with other people?

8 A. Most definitely. In fact, I was thinking like a Chinese
9 individual when I tested him.

10 Q. Okay. Are you familiar with the term, "form versus
11 function"?

12 A. Yes, very much so.

13 Q. And in America, in the United States, we are -- are we
14 form-type people or are we function-type people?

15 A. We like to see ourselves as function, but culturally we
16 are very much form. We observe form in the beginning of the
17 relationship more than function.

18 Q. And could you explain to the jury what is meant by we're
19 a formed society?

20 A. When you ask a 5-year-old boy what he wants to do, he's
21 not thinking how much money he's going to make. When he says
22 I want to be a fireman, he's looking at the big red hat and
23 the fire engine. It's more of an emotional form than it is a
24 functional decision. But if you ask a 5-year-old Chinese boy,
25 he'd already been told that accountants make good money and

1 et cetera and he's thinking function and he's not thinking
2 about the red hat or the fire engine.

3 Q. So would it be fair to say that in the Chinese culture,
4 they're raised to think about how am I going to support my
5 family?

6 A. Very much so.

7 Q. And not what big red hat I get to wear?

8 A. On top of that they have a beehive society. For every
9 one individual, we have to have five.

10 MR. LOUIS: I have to object. This witness is not
11 established and qualified to give those types of opinions as
12 to --

13 THE COURT: Well, he's got 30 plus years experience
14 in Mainland China. I'll overrule the objection. You can
15 finish your answer.

16 BY MS. KETTERMAN:

17 Q. The beehive society.

18 A. The beehive society has had more competition than we do
19 for any job.

20 Q. So if you were going to get ahead in China, you would
21 really have to be a go getter?

22 A. Much more so than the U.S.

23 Q. Okay. Now, as far as OPI, the company that Kevin is
24 president of, was that a large company?

25 A. No.

1 Q. Okay. Was it more or less a one-man show?

2 A. More or less, yes.

3 Q. Okay. Did his wife help out in the business?

4 A. No.

5 Q. Okay. Did he have a secretary?

6 A. He had a secretary, Miss Chow.

7 Q. Okay. And off and on, would he have part-time or
8 contract employees?

9 A. He would but they wouldn't stay around because they
10 couldn't keep up with Kevin.

11 Q. Okay. Have you actually been to Kevin's office?

12 A. Many time.

13 Q. In China; correct?

14 A. Yes.

15 MS. KETTERMAN: May I approach the witness, Your
16 Honor?

17 THE COURT: Yes.

18 BY MS. KETTERMAN:

19 Q. Mr. McCane, I'm going to show you what has been marked as
20 Defendant's Exhibit 4, 5, 6, 7, and 8. Without going into
21 what these pictures are, could you take a look at those
22 pictures for just a moment without going into what they're a
23 picture of?

24 A. 4 is --

25 Q. Just look at them first.

1 A. Okay. Okay.

2 Q. Do you recognize these photographs?

3 A. Yes.

4 Q. Do these photographs, do they show -- do they accurately
5 depict what they purport to depict? In other words, is what's
6 in these what's really in these?

7 A. Yes.

8 Q. Could you explain -- we'll start with 4 here -- what are
9 these photographs pictures of?

10 A. This is the 28th floor of the Plaza Royale, has a whole
11 condo complex behind it, which is business people live there.
12 When you first enter on the 28th floor --

13 Q. Just generally speaking, what are those photographs of?

14 A. On 4 you enter and you'd look to your left and that's
15 what you would see.

16 Q. Okay. Let me see. Is that Kevin's office?

17 A. Yes.

18 Q. Okay. That's what I wanted.

19 MS. KETTERMAN: Okay. Judge, if I may publish to the
20 jury using the Elmo.

21 THE COURT: You need to label that. Could you listen
22 just a second, please.

23 MS. KETTERMAN: Yes.

24 THE COURT: You need to label like 4-A. You already
25 have a 4.

1 MS. KETTERMAN: Yes, sir.

2 THE COURT: You need to show it to the other side.

3 MS. KETTERMAN: Yes, sir.

4 THE COURT: All right. What are the photographs that
5 you're offering? Give me the numbers.

6 MS. KETTERMAN: 4-A, Your Honor, 5, 6, 7 and 8.

7 THE COURT: Is there any objection to any of those?

8 MR. LOUIS: No objection, Your Honor.

9 THE COURT: They're admitted.

10 MS. KETTERMAN: Thank you, Judge. May I publish them
11 using the Elmo?

12 THE COURT: Yes.

13 BY MS. KETTERMAN:

14 Q. This photograph right here, is this a photograph of part
15 of Kevin's office?

16 A. Yes.

17 Q. And there's -- over on the left-hand side, there's what
18 appears to be a sign or poster board. Is that from your
19 company?

20 A. Kevin made that for us. The "E" there, the Ecotane was
21 our product's name and you can see T2 Labs.

22 Q. Okay. Defendant's Exhibit 5, this is another photograph
23 of almost the same area; correct?

24 A. Yes.

25 Q. Okay. And is this stairs right here going up?

1 A. That's the entrance, so if you keep on going you would
2 leave the office.

3 Q. Okay. Defendant's Exhibit 6, is this part of Kevin's
4 office also?

5 A. Yes, it is, it's going the opposite direction.

6 Q. And 7?

7 A. That's where the secretary worked.

8 Q. Okay. And 8?

9 A. That's where the guests of the month would work.

10 Q. Did Kevin have any type of factories?

11 THE COURT: Any type of what?

12 MS. KETTERMAN: Factories.

13 MR. LOUIS: Objection, unless this witness has some
14 personal knowledge.

15 THE COURT: Sustained.

16 BY MS. KETTERMAN:

17 Q. In your dealings with Kevin and working with Kevin and
18 being in China, do you know whether he owned any type of
19 factory?

20 A. In my dealings with Kevin he never mentioned owning a
21 factory.

22 Q. Did you spend -- if you could, in a month's time from
23 April of 2006, how much time a month would you spend in China
24 with Kevin?

25 A. From April till the next year, we had taken over ten

1 trips and each trip was 17 days.

2 Q. So you were there a fair amount of time?

3 A. Yes.

4 Q. And with Kevin a fair amount of time?

5 A. We'd arrive in Beijing and the next day we'd be out in
6 some refinery, yes.

7 Q. Okay. Now, during those 17-day stays did Kevin ever
8 mention to you that he had to leave because he had a factory
9 to run?

10 A. Never.

11 Q. Okay. Did he have any kind of manufacturing plant, to
12 your knowledge?

13 A. Not to my knowledge.

14 Q. Okay. Did he have any sort of printing plant such as
15 printing anything from newspapers to photographs to boxes?

16 A. Not to my knowledge.

17 MR. LOUIS: Objection. Calls for speculating about
18 that.

19 MS. KETTERMAN: If he knows.

20 THE COURT: Overruled.

21 BY MS. KETTERMAN:

22 Q. Did he ever mention anything like that to you?

23 A. No.

24 Q. Okay. Other than this small office, to your knowledge,
25 did Kevin have any other business facility?

1 A. He had an office in Nanjing. He was born in Nanjing and
2 he had an office in Nanjing.

3 Q. Okay. And was that office -- had you been to that
4 office?

5 A. No, I haven't.

6 Q. Okay. And -- I lost my train of thought.

7 MS. KETTERMAN: May I have a moment, Your Honor?

8 THE COURT: Yes.

9 MS. KETTERMAN: At this time I pass the witness.

10 THE COURT: Mr. Louis.

11 MR. LOUIS: Thank you.

12 CROSS-EXAMINATION

13 BY MR. LOUIS:

14 Q. Good morning, Mr. McCane.

15 A. Good morning.

16 Q. Now, you indicated that you have a company called T2; is
17 that right?

18 A. I work for a company called T2.

19 Q. And you're the vice president of international sales?

20 A. They made me vice president, yes.

21 Q. All right. And just so we're clear, this is a company
22 that you were trying to, at least with respect to China, be
23 able to provide your product which would boost octane?

24 A. Yes, sir.

25 Q. And you began making inquiries to find someone who could

1 help you market this product in China?

2 A. That's true.

3 Q. And you found Kevin Xu?

4 A. That's right.

5 Q. And during the time period, I think you said, between
6 2005 and April of 2006 you were basically trying to find
7 someone; is that correct?

8 A. That's a correct statement.

9 Q. And in that time period there were emails back and forth;
10 is that right?

11 A. That's correct.

12 Q. And those emails were in English, weren't they?

13 A. They were.

14 Q. And it was clear, based upon your emails -- and I believe
15 those emails were probably very specific because you're trying
16 to find someone who has knowledge about petrochemicals; right?

17 A. That's a correct statement.

18 Q. And so Mr. Xu had no problems understanding what you were
19 submitting in the emails and responding back to you; correct?

20 A. That's correct.

21 Q. Now, you met with him in April of 2006?

22 A. That's correct.

23 Q. Was that in China?

24 A. Yes.

25 Q. And when you met with Mr. Xu he had never met you before?

1 A. Never before.

2 Q. And when you sat down with Mr. Xu, did you explain to him
3 exactly what you wanted him to help you with?

4 A. Yes.

5 Q. And during that time period you were discussing with him
6 ways in which he might be able to get -- or help you be able
7 to meet with some high-ranking officials to be able to, at
8 least, showcase and market your products?

9 A. I did not reveal exactly how I wanted to do it. I was
10 more testing him to see if he could understand how to do it
11 with -- what I was doing without me telling him.

12 Q. You were not going to provide, at your first meeting, all
13 the information; is that right?

14 A. No.

15 Q. Because as a good businessman you're not going to do
16 that; right?

17 A. Especially to Chinese you wouldn't do that.

18 Q. Because, as you mentioned, the Chinese culture could take
19 your information and then make it their own?

20 A. Right.

21 Q. They're good at technically -- I hate to use the term --
22 but they can reproduce exactly what you were proposing?

23 A. Possibility.

24 Q. Take it and counterfeit it, make it their own; right?

25 A. There a possibility.

1 Q. And as your experience with the Chinese culture, that
2 happens on a fairly regular basis?

3 A. Especially the south.

4 Q. So when you met with Mr. Xu you were feeling him out to
5 see exactly how he might respond?

6 A. That's correct. I was testing his character.

7 Q. And then after talking with Mr. Xu you felt comfortable
8 that he might be able to assist you?

9 A. Yes.

10 Q. Now, at some point in time you entered into a contract
11 with Mr. Xu; is that right?

12 A. That's a correct statement.

13 Q. And when was that contract entered into?

14 A. The letter intent would start at the end of June of '06
15 and I believe the contract -- I incurred Scott Gallagher to
16 sign the contract within weeks of the letter of intent. And
17 we were the ones who proffered the contract.

18 Q. And why did you need a contract with Mr. Xu? You said
19 you met with him, you felt good, but now you wanted a
20 contract. What was the purpose of having a contract with
21 Mr. Xu?

22 A. It was all face. In other words, from a Chinese point of
23 view, by having a contract I would give good face to him.

24 Q. Isn't it true, sir, that when you do the majority of your
25 business you enter into contracts with folks, don't you?

1 A. Not in China. Depends on what I'm doing.

2 Q. Would it be fair to say, sir, when you were engaging
3 folks to, at least, market your services and they're receiving
4 a percentage of the sales, this is going to be a written
5 contract?

6 A. Yes, amen.

7 Q. Because you're not going to leave it to one person to
8 decide whether or not, "Well, I say I sold 10 percent, they
9 say I sold 2 percent"; right?

10 A. Yes, that's right.

11 Q. You're going to spell out the terms of that agreement?

12 A. Yes, we will.

13 Q. And there's nothing to hide, both sides know exactly what
14 the terms of that agreement is?

15 A. Yes.

16 Q. So if there's a dispute, they can go and litigate that,
17 is that right, if there's a dispute?

18 A. Litigation process in China is different than here.

19 Q. Well, that may be true, but the point of the matter is,
20 if there's a disagreement between the parties there's some
21 document that says at that time this is what we agree on?

22 A. That's correct.

23 Q. Now, and Mr. Xu, you said, was going to get -- was it
24 10 percent or 5 percent?

25 A. 5 percent.

1 Q. Now, did Mr. Xu actually assist you in meeting some of
2 the folk with the petrochemical industry?

3 A. Yes, sir.

4 Q. Now, in preparing for that meeting, Mr. Xu didn't discuss
5 hiding or not disclosing certain information to those
6 officials, did he?

7 A. No.

8 Q. He didn't suggest to you that, "We should not reveal
9 pertinent information," did he?

10 A. No.

11 Q. Did you provide data to these individuals to show this is
12 how our products could help boost octane? Did you have
13 specific test-market information?

14 A. Quite a lot, yes.

15 Q. That's right. And all that information was accurate,
16 wasn't it?

17 A. Yes, sir.

18 Q. You didn't try to lie to anybody or misrepresent what the
19 data was, did you?

20 A. That would be stupid for us to do so.

21 Q. You wouldn't do that, would you?

22 A. No.

23 Q. All right. Mr. Xu -- you said you testified that you
24 weren't aware that Mr. Xu -- let me ask you this question.
25 When you and Mr. Xu had discussions about him representing

1 your company, did he ever -- did you ever tell him this would
2 be a secret business?

3 A. No.

4 Q. Did he ever tell you this would be a secret business?

5 A. No.

6 Q. Did he ever suggest to you, sir, that you should -- if
7 you send your product in, mislabel it so that the customs
8 officials when it comes, they won't know what it is?

9 A. No, we never did that.

10 Q. Because you and Mr. Xu were conducting a legitimate
11 business; right?

12 A. And we were dealing with hazardous material.

13 Q. That's right. Now, you indicated Mr. Xu's company dealt
14 with raw material. I think that's what you said.

15 A. He traded chemical material, yes.

16 Q. So when you went to his office, you didn't see any
17 pictures that we see, there are no documents on his desk,
18 there's no samples or anything of petrochemicals, are there?

19 A. Well, no, I don't see any in those pictures.

20 Q. But that's what his business was?

21 A. Yes.

22 Q. So they're somewhere but they're not in these pictures;
23 right?

24 A. No.

25 Q. And you've never been to Mr. Xu's other office?

1 A. No.

2 Q. You don't know what Mr. Xu was doing with respect to that
3 office, do you?

4 A. That's a correct statement.

5 Q. You don't know anything about this case, do you?

6 A. Just what I read in the paper.

7 Q. And when you discussed with Mr. Xu the business venture,
8 you said he -- you would discuss it and then he would send
9 very detailed reports back to you in English.

10 A. Yes.

11 Q. Mr. Xu didn't have any problems understanding, did he?

12 A. It's actually very easy for people to write English
13 versus listen and understand English. Most Chinese business
14 people can -- who have worked with English can write it but
15 they don't necessarily have to understand English.

16 Q. We've not talking about most, we're talking about Mr. Xu.

17 A. Mr. Xu has average English skills for a Chinese
18 individual, but excellent written skills.

19 Q. So if Mr. Xu was telling somebody how to spell the word
20 c-o-a-l, coal, would that indicate that somebody has an
21 understanding of how to spell the word coal if he's trying to
22 correct somebody?

23 A. I suppose, yes.

24 Q. And you said the Chinese culture's a little different
25 than the culture here.

1 A. Yes.

2 Q. Now, Mr. Xu is a businessman, is he not?

3 A. Yes.

4 Q. He was in the business to make money?

5 A. That's correct.

6 Q. That's a universal language of business, isn't it?

7 A. Yes, it is.

8 Q. So if it's in China or it's in the United States, the
9 opportunity to make money is something that Mr. Xu, you said,
10 relished; is that right?

11 A. He was a hard-working businessman.

12 Q. He jumped to the opportunity to make some money; is that
13 right? I think that's what you said.

14 A. Opportunities he would take advantage of, yes.

15 Q. And whether or not Mr. Xu took advantage of some illegal
16 opportunity, you have no knowledge about that, do you?

17 A. That's a correct statement.

18 Q. You have no knowledge about whether Mr. Xu told anybody
19 that he provided generic chemicals to Chinese hospitals, you
20 know nothing about that?

21 A. I don't know anything about that.

22 Q. And you don't know anything about Mr. Xu sending any
23 pharmaceuticals to Europe or anything like that?

24 A. I don't know anything about that.

25 Q. Did Mr. Xu introduce you to any of his other business

1 colleagues that he did business with?

2 A. He would introduce me to friends.

3 Q. But not business colleagues?

4 A. No, they would be -- well, a lot of businessmen, he
5 introduced me to a lot of businessmen. They're just
6 businessmen and they had different positions.

7 Q. Okay. Just so we're absolutely clear, I want to show you
8 quickly some photographs. Mr. Xu never discussed sending any
9 of your products in barrels like this?

10 A. No.

11 Q. And as far as Mr. Xu's business venture, the only one
12 that you know of is him working with you and trying to help
13 you get business in China; would that be a fair statement?

14 A. That's a correct statement.

15 THE COURT: Any redirect?

16 MS. KETTERMAN: Just a couple of questions, Your
17 Honor, if I may.

18 MR. LOUIS: May I have a moment?

19 BY MR. LOUIS:

20 Q. Do you have any knowledge about the term parallel
21 importer? Do you know what a parallel importer is?

22 A. A parallel importer?

23 Q. Yes. By your expression, that seems to --

24 A. No, I -- you know, I have an MBA in Asian business
25 dynamics. And that's the first time I heard that term.

1 Q. All right. And so you have no knowledge of whether
2 Mr. Xu has any dealings as a parallel importer?

3 A. I couldn't answer that because I don't know what it
4 means.

5 MR. LOUIS: Thank you, sir.

6 Pass the witness.

7 MS. KETTERMAN: Just a few, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. KETTERMAN:

10 Q. Mr. McCane, the Government asked you if -- or was talking
11 about having a contract with Kevin as a Chinese person because
12 they could easily reproduce.

13 A. Right.

14 Q. Okay. After you dealt with Kevin via correspondence and
15 then met him, did you form an opinion in your specific
16 dealings with him whether he could be trusted with your
17 business?

18 A. The key in this dealing with Chinese individuals when
19 money starts to flow you watch how they deal with the money.
20 And we were paid very quickly and he got his 5 percent cut.
21 And that, to me, makes him an honest businessman.

22 Q. Okay. So when he would make a sale, I mean, as far as
23 you know, he never kept any of the money, your business got
24 the money; is that correct?

25 A. Each container that we sent to Kevin was worth 450,000 US

1 dollars so he kept it there. He could have stole it, he could
2 have run with it, what have you. When it got sold, he paid
3 us.

4 Q. Is it normal in the Chinese culture -- well, I guess any
5 culture -- when you first start negotiating, is it normal in
6 sales to immediately have a contract?

7 A. No.

8 Q. Okay. That's something that comes whether it's days,
9 weeks or months later; correct?

10 A. That's correct.

11 Q. In sales, would it be fair to say that most salesmen do
12 what's called puffing?

13 A. All the time.

14 Q. Could you explain to the jury what "puffing" is?

15 A. Puffing is being agreeable in nature, getting all the
16 sandpaper out of your personality so that you may accomplish
17 the final end which is to do business.

18 Q. So would it be fair to say that in puffing that it's
19 reasonable for a person to say -- or if you ask me, could you
20 do X, Y and Z, even if I don't know what it is, I'm going to
21 agree, I'm going to say, "Yes, yes, I can do it"?

22 A. Yes.

23 Q. And then "I'll figure out later how to do it"; right?

24 A. Yes.

25 Q. Or "figure out how to get it"?

1 A. Yes.

2 Q. Is that the type of person that Kevin was in your
3 dealings with him?

4 A. He had good salesman qualities, yes.

5 Q. Now, in your dealings with Kevin, did you ever ask him to
6 hide any of your chemicals?

7 A. No.

8 Q. Did you ever ask him to try to sneak them into any
9 country in any sort of secret way?

10 A. No. These are hazardous chemicals. There's a lot of
11 laws surrounding them.

12 Q. Right. But my question is: Did you ever propose to him
13 or did you ever give him the idea that this -- "I don't want
14 anybody to know about this"?

15 A. No.

16 Q. "So let's keep this big secret" or "let's hide them"?

17 A. No.

18 MS. KETTERMAN: I pass the witness, Your Honor.

19 THE COURT: Anything else, Mr. Louis?

20 RECROSS-EXAMINATION

21 BY MR. LOUIS:

22 Q. Is it normal for someone to tell you that they don't want
23 a written contract?

24 A. In China, no, no.

25 Q. If you're doing a legitimate business, would you ask

1 somebody to pay the importer so they could have your goods to
2 pass through?

3 A. No, you wouldn't want to enter that type of -- you know,
4 you'd want a legitimate business.

5 Q. And you wouldn't want to make those suggestions, would
6 you?

7 A. That would be foolish.

8 Q. Because that would be, what, illegal?

9 A. Right.

10 MR. LOUIS: Thank you, sir.

11 THE COURT: May the witness be excused?

12 MS. KETTERMAN: He may, Your Honor.

13 THE COURT: Thank you, sir. You're excused.

14 All right. The defendant may call its next witness.

15 MR. AMANN: Defendant closes, Your Honor.

16 THE COURT: Okay. Does the Government have anything
17 else?

18 MR. AMANN: We'll rest, I should say.

19 MR. LOUIS: The Government rests, Your Honor.

20 THE COURT: All right. Ladies and gentlemen, we're
21 going to take a recess now. It's going to be more than
22 15 minutes because, let me tell you what we have to do. I
23 have to give the -- both sides an opportunity to be sure that
24 all their exhibits are in evidence. We've been working on the
25 jury instructions that you will hear in a few minutes. I have

1 to give them a final opportunity to review those and object,
2 if they wish. I have to have them typed and duplicated. I
3 have to get the courtroom ready for final argument. So it's
4 going to take more than 15, but less than 30 minutes probably
5 to get all that done. In the meantime, I ask that you stay
6 around the jury room. I mean, you can go outside to make a
7 cellphone call or something but when we're ready for you, we
8 want you to be here, because we're trying to use your time
9 efficiently, to argue the case to you this morning. So we'll
10 stand in recess for some amount of time more than 15 but less
11 than 30 minutes to be determined.

12 Thank you.

13 (Outside the presence of the jury.)

14 THE COURT: Be seated.

15 All right. Let's do some housekeeping matters.

16 First of all, the Government gave me a revised
17 exhibit list. I show the following exhibits to be in
18 evidence -- get your list and let's be sure we all agree.

19 MS. KETTERMAN: Yes, sir.

20 THE COURT: As to 52, I show 52, 52-A, 52-B, 52-C,
21 52-D, and 52-I. I don't show anything as to 52-E, but since I
22 didn't have a list, it may have been offered but I not made a
23 note of it.

24 MS. KETTERMAN: I have 52-E as offered and admitted
25 on July 2nd.

1 THE COURT: All right. Then 52-E also.

2 As to 56, I show the following: 56, 56-A, 56-B, 56-C
3 and 56-D.

4 Do you all agree?

5 MS. KETTERMAN: I do, Your Honor.

6 MR. LOUIS: Yes.

7 THE COURT: All right. If you will just have a seat
8 I'm having the verdict form retyped in what I think is the
9 proper manner.

10 MR. LOUIS: May I run to the restroom real quick?

11 THE COURT: Sure.

12 Let me give these back to the defense. These are
13 extra photographs I don't need.

14 MS. KETTERMAN: Sorry about that, Your Honor.

15 THE COURT: No, that's fine.

16 So y'all need to marshal the exhibits, that is, to
17 put in one location the exhibits that have been admitted. You
18 each have a copy of the exhibit list. So that's what you're
19 doing, I assume.

20 MR. LOUIS: Yes, we're taking stuff that's not
21 admitted.

22 THE COURT: Okay. Before they go to the jury, I'll
23 ask each of you to confirm that's what in evidence.

24 (There was a recess taken.)

25 THE COURT: Let me give you that revised verdict

1 form.

2 Here's one for the Government.

3 There's one for the defense.

4 If you will have a seat, I'll tell you what we've
5 done. You see that on Count 1 I've just given the jury three
6 questions. They find guilt or not guilt as to the three
7 alleged statutory conspiracies. That way we'll know which, if
8 any, conspiracies the jury finds the defendant guilty of.
9 Does everyone agree that that's the proper way of submitting
10 this?

11 MR. LOUIS: I have no objection to this.

12 MR. AMANN: Yes, Judge, just so they understand that
13 they all have to be unanimous on each individual one. One
14 juror can't say, "I believe this is conspiracy."

15 THE COURT: I'll tell them -- I'll tell them orally
16 that they have to be unanimous as to whichever ones they
17 answered.

18 MR. AMANN: Right. Thank you, sir.

19 THE COURT: All right. Does defense want to renew
20 its motion for purposes of appeal?

21 MR. AMANN: Yes, our Rule 29 motion for judgment of
22 acquittal, Your Honor. I stated my grounds yesterday. The
23 same grounds. I don't think the Government proved the
24 trademark as registered like they are supposed to, like they
25 have alleged and as is an element of the offense.

1 THE COURT: Motion is denied.

2 Either of you going to use the machines, the overhead
3 or --

4 MR. LOUIS: No, we don't have enough time. We're
5 just going to use the Elmo, Your Honor.

6 THE COURT: Okay. All right. We'll take a 15-minute
7 break. When we come back, I will charge the jury. The
8 Government may make an opening statement and then the defense.
9 We can probably get it done without a recess, but we'll just
10 have to see how it goes.

11 Anything else?

12 MR. LOUIS: No.

13 MR. AMANN: No, sir.

14 THE COURT: Take the defendant back up and give him a
15 break and we'll --

16 When everybody's ready, we'll reconvene.

17 (There was a recess taken.)

18 (Jury comes in.)

19 (The jury instructions were given, but not
20 transcribed.)

21 (The Government's and defendant's closing arguments
22 were given, but not transcribed.)

23 THE COURT: Thank you.

24 All right. Ladies and gentlemen, in just a moment
25 I'm going to ask that you return to the jury room and begin

1 your deliberations. You should not deliberate unless all of
2 you are present in the jury room. The first thing you should
3 do is select your foreperson who will guide your
4 deliberations.

5 When the jury goes back to the jury room, I'm going
6 to ask that our two alternates wait outside the jury room. I
7 want to thank Miss Weaver and Mr. Baron for your patience and
8 your cooperation. It looks like we have 12 able jurors, who
9 will be able to deliberate. So I'm going to release you with
10 two caveats.

11 First, we will call you and let you know what the
12 verdict is if you will give your phone number to Miss Carr.

13 Secondly, until we call you, do not talk to anyone
14 about the case or allow anyone to talk to you because I have,
15 in one rare instance, had to recall an alternate juror when
16 one of the jurors got sick. So until we call you and let you
17 know what the verdict is, you are still under my instructions
18 not to discuss the case or allow anyone to discuss it with
19 you.

20 We will have brought to the jury all of the exhibits
21 that are admitted into evidence and a copy of the indictment.
22 The indictment I've already referred to in the instructions.
23 We will not have a transcript of any of the testimony. That's
24 why I've allowed you to take notes. I remind you that if you
25 took notes, you should rely primarily on your own recollection

1 of what the evidence is. Notes are not more important than
2 that recollection, they are only memory aids. And if you took
3 notes, you should not share them with anyone else.

4 From here on out you set your own schedule. You can
5 decide when to take a break. You can decide when or whether
6 to take a lunch break. If you take a break, those of you who
7 remain in the jury room should not discuss the case. Only
8 when all of you are together in the jury room may you
9 deliberate.

10 You may now retire to the jury room and commence your
11 deliberations.

12 (Outside the presence of the jury.)

13 THE COURT: All right. Do we have the exhibits
14 assembled?

15 There are only a few of defense exhibits, they're the
16 four photographs. We've discussed several times the
17 Government's exhibits.

18 Listen up. I have another matter in about
19 15 minutes.

20 You get together and agree on those that are the
21 exhibits. And if they are, let my law clerk know. He will
22 have the bailiff come in and take them in the jury room.

23 Okay. If there's a disagreement, let my law clerk
24 know and I will come in and resolve the disagreement and then
25 we will call the bailiff.

1 Are there any questions?

2 MR. AMANN: No, sir.

3 MR. LOUIS: No, sir.

4 THE COURT: Okay. We need to do that in about 15
5 minutes because we have some other folks who will be here.

6 Thank you very much.

7 And I also require one lawyer for each side to be
8 present while the jury is deliberating in case we have a note
9 or a verdict. So we'll let you know if they take a lunch
10 recess and we'll let you know when they expect to return so
11 you can take a break.

12 Okay. Any questions?

13 MR. AMANN: No, sir.

14 (There was a recess taken while the jury
15 deliberates.)

16 THE COURT: The jurors have submitted a note which
17 says, "Judge Lake, the jurors have requested to view the
18 Bangkok video. Is this possible?"

19 First of all, it's in evidence, isn't it?

20 MR. LOUIS: Yes, it's in evidence.

21 MR. BUCKLEY: That's my understanding too, Your
22 Honor.

23 THE COURT: So the question is -- there doesn't seem
24 to be any reason they shouldn't look at it. The question is:
25 Do we have a monitor and a DVD player?

1 CASE MANAGER: I can probably see if our system's
2 department has a laptop that we could use for them to view it
3 on.

4 THE COURT: Does the Government have one downstairs
5 that you view it on in your office?

6 MR. LOUIS: We have one that we use in trial. That's
7 what I was going to suggest. I can probably go ahead and get
8 it.

9 THE COURT: Where is it? I mean, is it in the bank
10 of the Southwest Building or is it in this building?

11 MR. LOUIS: I need to check with the paralegal
12 because she took it downstairs and I'm not sure if she took it
13 back to the office or not.

14 THE COURT: Okay. Why don't you go check.

15 MR. LOUIS: Okay.

16 (There was a recess taken.)

17 THE COURT: What's the answer?

18 MR. LOUIS: Well, we have one. We can provide it.
19 The only problem is it's the Government's and it's got a pass
20 protect on it.

21 THE COURT: It's got a what on it?

22 MR. LOUIS: It has a pass protection so in order for
23 them to -- we can probably go ahead and open it. But after a
24 certain time it will -- in order to access it, you have to
25 have a code because it's a Government computer so you have to

1 have a password.

2 THE COURT: Okay. Well, it's all right. You can
3 open it. Let's go get it.

4 MR. LOUIS: It's right here.

5 THE COURT: How do they see it?

6 MR. LOUIS: On the screen.

7 PARALEGAL: On the little screen.

8 THE COURT: Okay. Let's be sure we've got the right
9 exhibit. I don't want them just flipping through your file.

10 MR. LOUIS: It's already loaded in here. We can have
11 them play the exhibit that's in evidence, either one. We
12 loaded all the exhibits in here.

13 THE COURT: Well, what is the correct exhibit number
14 of the -- it's Exhibits 8 and 9.

15 MS. KETTERMAN: One of them is the hour or two long
16 one and then there's one that's the excerpts.

17 MR. LOUIS: The video is 8, the audio is 9 and the
18 excerpts are 9-A so I imagine they want to listen to the audio
19 because the video is just the --

20 THE COURT: The excerpts are 9-A?

21 MR. LOUIS: Yes.

22 THE COURT: That's all they've heard.

23 MR. LOUIS: Right. We have that. That's in here as
24 well.

25 MR. BUCKLEY: Do you know, Your Honor, whether

1 they've specified in their question whether they wanted the
2 excerpts or the whole -- I'm just curious about that.

3 THE COURT: I'll just ask them.

4 I propose to say, "Do you want to watch the entire
5 video or only the excerpts that were played in Court?"

6 Is that agreeable?

7 MR. AMANN: Yes, sir.

8 MR. LOUIS: Yes, sir.

9 THE COURT: How long did the excerpts take?

10 MR. LOUIS: We had one, two, three, four -- is that
11 eight excerpts? Eight excerpts and, I think, it took a total
12 of, roughly, I think it was 35 minutes --

13 THE COURT: Okay.

14 MR. LOUIS: -- as opposed to an hour and a half.

15 THE COURT: It might be easier just to bring the jury
16 in and play them in here. I mean, is it possible to take that
17 back there and first show the bailiff how to operate it and
18 then have him show someone else how to operate it?

19 MR. LOUIS: Depends on how technically challenged
20 they are because it's just each excerpt is a way you have to
21 click on that, you know, come on and click on the next one.
22 If the Court wants to, we can try to show them.

23 MR. AMANN: Judge, the only -- I guess, while they're
24 watching it, I'm sure they would want to feel encouraged to
25 talk and discuss things as they were hearing and perceiving

1 stuff. I wouldn't want that to be stifled by being in the
2 courtroom, if that's a concern.

3 THE COURT: Can you download those nine excerpts on a
4 separate disk and just give that to them?

5 MR. LOUIS: Yes. It may take a little bit. We have
6 it in evidence.

7 THE COURT: So that disk they have is just the
8 excerpts?

9 MR. LOUIS: Yes, 9-A is just the excerpts.

10 THE COURT: Okay. So all we need now is a way for
11 them -- if that's what they choose -- is to show it.

12 CASE MANAGER: They're taking a one-hour lunch break.

13 THE COURT: They would like to watch just the
14 excerpts and --

15 Wait a minute. Tell them to hold on.

16 Okay. They would like just to watch the excerpts and
17 instead of the Bangkok, they would like to see the Houston
18 video. So is the Houston video --

19 MR. LOUIS: It's also an exhibit. It's on a separate
20 disk.

21 THE COURT: Is the sound and the video on the same
22 one?

23 MR. LOUIS: Yes.

24 THE COURT: Okay. So what we need now is a machine.
25 What exhibit is that? That is 43, I believe.

1 Okay. Let them go, I'm sorry, I've got an answer.

2 MR. LOUIS: If we can get 43 and then also, I guess,
3 make sure -- send this back and --

4 THE COURT: Well, they have 43. Do they already have
5 a disk?

6 MR. LOUIS: Yes. I mean, you said you wanted --

7 THE COURT: Was it in that box?

8 MR. LOUIS: Yes, Your Honor.

9 THE COURT: Okay. So what they need is a machine
10 that will play it.

11 MR. LOUIS: Yes.

12 THE COURT: All right. On the record, the jury has
13 submitted two notes. The first says, "The jurors have
14 requested to view the Bangkok video. Is this permissible?"

15 In response, after obtaining the concurrence of all
16 counsel, I ask the jury, "Do you want to watch the entire
17 video or only the excerpts that were played in Court?"

18 The jury then responded, "They would like to watch
19 the excerpts and instead of the Bangkok, they would like to
20 see the Houston video."

21 Since the Houston video is already in evidence, they
22 have a right to watch it. Does everyone agree?

23 MR. LOUIS: Yes, Your Honor.

24 MR. AMANN: Yes, Your Honor.

25 THE COURT: So what we need now is to find a device

1 by which they can watch it.

2 MR. LOUIS: We will tender the computer. What I
3 would suggest, while everyone is present, if we would be able
4 to get the Government's Exhibit 43, put it in there, have it
5 already set, send it back and then it's available and ready to
6 go.

7 THE COURT: Can you ask the bailiff to get
8 Government's Exhibit 43?

9 (Discussion was held off the record.)

10 THE COURT: All right. They've gone to lunch so now
11 we're going to go to lunch. We'll come back in 45 minutes,
12 see if it works and we'll show it to them.

13 The defendant will be back here in 45 minutes as will
14 all counsel.

15 We'll stand in recess.

16 (There was a lunch recess taken.)

17 THE COURT: Be seated. Let's see if the disk will
18 play all right.

19 MR. AMANN: Judge, actually we've got a portable DVD
20 player so we wouldn't have to use the Government's computer
21 that has all their other exhibits on it. And if there's a TV
22 available, this DVD player will actually plug into the TV.

23 THE COURT: Where is the TV?

24 MR. AMANN: I was asking.

25 MS. KETTERMAN: You don't need one. You can watch it

1 on this.

2 MR. AMANN: You can watch it on this.

3 THE COURT: Well, let's just see how it works.

4 MR. AMANN: Okay.

5 (Trying DVD player.)

6 THE COURT: Stop it. That's good. Does everybody
7 agree that that device is suitable to play the exhibit?

8 MR. AMANN: Yes, sir.

9 MR. LOUIS: Yes, except the sound.

10 (Discussion was held off the record.)

11 THE COURT: Ask the bailiff to come in.

12 All right. I want you to plug it in. I want you to
13 show him how to use it. I know you'd like to go back there
14 and show it.

15 MS. KETTERMAN: I'd be more than happy to.

16 (Bailiff comes in.)

17 THE COURT: We're going to show them an exhibit. The
18 exhibit's the DVD. So you're going to have you take it back
19 there and plug it in and show it. It only involves pressing
20 one button so I'm going to show you how to do it.

21 (Discussion was held off the record.)

22 THE COURT: Okay. We'll stand in recess pending
23 another note or verdict.

24 You may want to leave the defendant here for a while.
25 It's up to you. You can leave him or take him back, whatever

1 is convenient.

2 We'll stand in recess.

3 (There was a recess taken.)

4 THE COURT: Have a seat please.

5 The jury has advised they've reached a verdict. Is
6 everyone present?

7 MR. AMANN: Yes, we are.

8 THE COURT: Okay. Bring the jury in, please.

9 MR. LOUIS: Judge, he may want to put his tie on
10 before they come in.

11 MR. AMANN: Yes. We just thought it was a note so he
12 didn't have his tie on.

13 (Discussion was held off the record.)

14 THE COURT: Good afternoon. Please be seated. I'm
15 informed that you have reached a verdict.

16 Will the foreperson please hand the note to the
17 bailiff.

18 Thank you.

19 Do you need an interpreter?

20 MR. AMANN: Judge, we don't need to delay things for
21 that, just for purposes of taking the verdict.

22 THE COURT: Thank you.

23 MR. AMANN: Thank you, Your Honor.

24 THE COURT: All right. Will the defendant please
25 rise.

1 I'll read the verdict. We, the jury, find the
2 defendant guilty of conspiracy to traffic and attempt to
3 traffic in counterfeit goods in violation of Title 18, United
4 States Code Section 2320(a).

5 We, the jury, find the defendant guilty of conspiracy
6 to cause the introduction of prescription drugs into
7 interstate commerce that are misbranded in violation of
8 Title 21, United States Code, Section 331(a).

9 We, the jury, find the defendant guilty of conspiracy
10 to cause the introduction of counterfeit prescription drugs
11 into interstate commerce in violation of Title 21, United
12 States Code, Section 331(i).

13 Count 2: We, the jury, find the defendant guilty of
14 the offense charged in Count 3.

15 Count 3: We, the jury, find the defendant guilty of
16 the offense charged in Count 3 of the indictment.

17 Count 4: We, the jury, find the defendant guilty of
18 the offense charged in Count 4 of the indictment.

19 Count 5: We, the jury, find the defendant guilty of
20 the offense charged in Count 5 of the indictment.

21 Count 6: We, the jury, find the defendant guilty of
22 the offense charged in Count 6 of the indictment.

23 Count 7: We, the jury, find the defendant guilty of
24 the offense charged in Count 7 of the indictment.

25 Count 8: We, the jury, find the defendant guilty of

1 the offense charged in Count 8 of the indictment.

2 And Count 9: We, the jury, find the defendant guilty
3 of the offense charged in Count 9 of the indictment.

4 The verdict is signed by the foreman as -- be
5 seated -- as required by the Court's instructions.

6 In order for the record to be clear that it is a
7 unanimous verdict, I'm going to ask each of you by name to
8 state that this is your verdict.

9 Miss Rhodes, is that your verdict?

10 JUROR: It is, sir.

11 THE COURT: Mr. Copeland, is that your verdict?

12 JUROR: Yes, Your Honor.

13 THE COURT: Mr. Robson, is that your verdict?

14 JUROR: Yes, Your Honor.

15 THE COURT: Mr. Rump, is that your verdict?

16 JUROR: Yes, Your Honor.

17 THE COURT: Miss Pirtle, is that your verdict?

18 JUROR: Yes, Your Honor.

19 THE COURT: Miss Brinkman, is that your verdict?

20 JUROR: Yes, Your Honor.

21 THE COURT: Mr. Orozco, is that your verdict?

22 JUROR: Yes, Your Honor.

23 THE COURT: Mr. Knievel, is that your verdict?

24 JUROR: Yes, Your Honor.

25 THE COURT: Miss Arevalo, is that your verdict?

1 JUROR: Yes, Your Honor.

2 THE COURT: Mr. Asevedo, is that your verdict?

3 JUROR: Yes, Your Honor.

4 THE COURT: Mr. Benner, is that your verdict?

5 JUROR: Yes, sir.

6 THE COURT: And Mr. Nguyen, is that your verdict?

7 JUROR: Yes, sir.

8 THE COURT: Would you please stand, Mr. Xu.

9 In accordance with the unanimous verdict of the jury,
10 I now adjudge you guilty of Counts 1 through 9. You may be
11 seated.

12 Ladies and gentlemen, I want to thank you very much
13 for your patience and your attention to the evidence and the
14 diligence you exercised today in your deliberations. I know
15 when you came here Monday you probably hoped that you would
16 not be selected as a juror. We as citizens of this country
17 have a number of benefits that we all share. We also have
18 certain responsibilities as citizens. Voting is one and jury
19 service is another. It's difficult to serve as a juror. In
20 many cases it interferes with your jobs or your personal
21 lives. But that's the only way we have in this country of
22 resolving disputed lawsuits is to have a jury of citizens
23 decide whether in this case the Government could prove the
24 charges beyond a reasonable doubt.

25 You have the satisfaction of knowing that if you or a

1 friend or a loved one or an employer was a party to a civil or
2 criminal case, that you or they would have their case presided
3 over with equal attention and diligence as you have presided
4 over this case. So I thank you and the parties thank you.
5 More importantly, our system of justice thanks you because in
6 many parts of the world people are convicted and sent to
7 prison without the rights that defendants have in this
8 country.

9 In just a moment I'm going to excuse you. I'll ask
10 that you return to the jury room. My case manager, Miss Carr,
11 will be back there to give you documentation to show your
12 employer or anyone else that you need to show where you've
13 been and so that you can be paid for your service.

14 After today you may discuss the case with anyone or
15 you may decline to do so. There's one exception. The rules
16 of this Court do not allow you to discuss your participation
17 as a juror with the parties to the case. So if anyone should
18 call you and wish to talk to you about the case, be sure that
19 that person is not affiliated with the United States
20 Government or the defendant. We do that because the primary
21 reason that parties call jurors is to try to show some type of
22 jury misconduct and it's not appropriate under our local rules
23 for them to do that. So you may talk to friends, family
24 members, anyone else but not a party to this case.

25 Also, it's my practice to come back when I excuse the

1 jury and see if you have any questions about the process or,
2 more importantly, any suggestions for how we can improve the
3 process because your taxes pay me and all the other court
4 personnel and if there's some suggestions you have for
5 improving it, we'd like to know. On the other hand, you don't
6 need to stick around. This is not some campaign appearance.
7 I'm appointed for life. I'm not seeking your vote in the next
8 election, but I am seeking your ideas about things that you
9 think should be done differently.

10 You may now return to the jury room. I'll be back
11 momentarily.

12 (Outside the presence of the jury.)

13 THE COURT: Sentencing will be September 26th at 3:00
14 p.m.

15 Be seated.

16 The Rule 29C states that a defendant may move for
17 judgment of acquittal or renew such a motion within seven days
18 of a guilty verdict or after the Court discharges the jury,
19 whichever is later. Since they both occurred today, that
20 would be seven days from today. I think, given the argument
21 raised on the trademark issue, that it makes no sense to file
22 such a motion until you have a transcript of the trial because
23 we all have our own recollections and we all took our own
24 notes. So I would like the Government to agree on the record
25 that the seven-day time period is extended until seven days

1 after the court reporter delivers the transcript to counsel.

2 MR. LOUIS: No objection.

3 THE COURT: Is that agreeable?

4 MR. LOUIS: That's agreeable.

5 THE COURT: So the court reporter will sell you a
6 copy for a reasonable fee and you have seven days from the day
7 you receive the certified copy of the transcript to file your
8 motion.

9 MR. AMANN: Yes, sir. Thank you.

10 THE COURT: All right. Is there anything else that
11 we need to do this afternoon?

12 MR. LOUIS: Not from the Government, Your Honor.

13 MR. AMANN: I do not believe so, sir.

14 THE COURT: All right. I appreciate it. It was a
15 well and efficiently tried trial from all cases -- from all
16 standpoints.

17 Mr. Xu, the fact that you didn't win does not mean
18 your lawyers did not do a good job. Quite frankly, the
19 evidence was overwhelming. So you need to thank your lawyers.
20 I think the jury deliberated for quite a while and tried to
21 reach a fair decision given the evidence in the case.

22 If you'll wait, we'll give you back your player.

23 MS. KETTERMAN: Yes, sir.

24 THE COURT: And the Government will need to file a
25 motion to withdraw the large bulky exhibits before you leave

1 because we don't have any way to store them. So you need to
2 stick around.

3 So the defendant is remanded to the custody of the
4 marshal.

5 Subject to receiving your DVD player and the
6 Government's withdrawing the large bulky exhibits, counsel are
7 excused. I'll be back in just a moment.

8 (Court recessed at 4:39 p.m.)
9
10

11 I certify that the foregoing is a correct transcript
12 from the record of the proceedings in the above-entitled
13 matter.

14 /s/
15 JEANETTE BYERS, RPR
16 September 3, 2008
17
18
19
20
21
22
23
24
25